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# REVIEW OF RECENT DEVELOPMENTS RELATING TO THE WORK OF THE TREATY BODIES

# STATUS OF THE ANNUAL APPEAL 2001 OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND OF THE PLANS OF ACTION

# STRENGTHENING SUPPORT TO AND ENHANCING THE EFFECTIVENESS OF THE TREATY BODIES

**Report by the Secretariat**

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## Introduction

1. The present report has been prepared by the secretariat to update the chairpersons on the implementation of the recommendations adopted at their 12th meeting, in June 2000, as well as to provide background information on some of the issues to be discussed at their 13th meeting.

## I. REVIEW OF RECENT DEVELOPMENTS RELATING TO THE WORK OF THE TREATY BODIES

### A. Honoraria

2. In paragraph 73 of the report on their 12th meeting (A/55/206), the chairpersons recommended that the Chairperson and Vice-Chairperson of the 12th meeting and the Secretariat follow up on the recommendations adopted at previous meetings of chairpersons concerning the equal payment of honoraria to members of all treaty bodies. In this connection, the meeting authorized its Chairperson to address a letter to the Secretary-General requesting him to take all appropriate measures to resolve the issue at the forthcoming session of the General Assembly. A letter was sent to the Secretary-General by the Chairperson of the 12th meeting on 5 July 2000, requesting his assistance in the matter; a copy of which was provided to all the treaty body chairpersons. The question of equal payment of honoraria to members of expert bodies was on the agenda of the fifty-fifth session of the General Assembly, but was not the subject of any resolution. The matter therefore remains pending.

### B. Human rights indicators

3. The chairpersons agreed on the usefulness of human rights indicators that would make measurement of the level of enjoyment of all human rights possible. They encouraged the Office of the Untied Nations High Commissioner for Human Rights (OHCHR) to continue to lead in the development of civil and political rights indicators and agreed to discuss within the treaty bodies how they might provide guidance and input in this respect.

4. A conference was convened by the International Association for Official Statistics (IAOS) in September 2000 on "Statistics, development, and human rights". It was attended by representatives of a number of national statistical agencies of the United Nations and specialized agencies. Human rights was a central theme of many of the panels and discussions at the conference. In follow-up to the conference, OHCHR has been in contact with the IAOS secretariat to consider how the two institutions could collaborate on the development of human rights indicators. Both sides recognize that, as a first step, a review of the types of information received by OHCHR should be undertaken. It is felt that the results of the review would be the best basis for considering how the development of indicators could be pursued most effectively. Consultations are continuing on how such a review could be undertaken - possibly by a statistician to be hired with assistance from IAOS to work at OHCHR.

## II. STATUS OF THE ANNUAL APPEAL 2001 OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND OF THE PLANS OF ACTION

### A. Developments to date

5. This section outlines the status of OHCHR efforts to raise extrabudgetary funds for the treaty bodies and to implement the activities for which such funds are raised.

6. Before entering on the subject matter, however, a brief explanation of the process of implementing the plans of action might be helpful in clarifying the terminology that appears here. The Plans of Action to strengthen the implementation of the treaties serviced by OHCHR were conceived by the treaty bodies as a way of securing additional resources for a range of functions and activities that were inadequately funded, or not funded at all, under the regular budget. The Plans of Action normally cover a span of several years and reflect a broad vision of the types of action that the treaty bodies wish to engage in. The Plans of Action were converted into a biannual "project", in which the priorities and expected outputs for the years 2000-2001 were specified. All the projects that OHCHR seeks to implement in a given year for which extrabudgetary funds are sought are compiled in an "Annual Appeal" to donors. Accordingly, fundraising for part I of the project for the treaty bodies (for the year 2000) took place through the Annual Appeal for the year 2000, and for part II, through the Annual Appeal for 2001.

7. Continuing on the progress made in 2000, the central objectives established for the year 2001 were (a) to reduce the time lapse between the submission of reports by States parties and their consideration by the respective Committees, (b) to reduce the backlog in complaints under the Human Rights Committee, and (c) to improve the follow-up to treaty body recommendations and observations by States parties.

8. The central objectives were to be achieved by:

(a) Strengthening the process by which treaty bodies examine State reports, in particular through significantly enhancing Secretariat capacity to conduct research and analysis in support of this process, and systematic efforts to provide new members of treaty bodies with basic information to help them fulfil their new responsibilities;

(b) Strengthening the process by which those treaty bodies that administer individual complaints procedures examine complaints, in particular through significantly strengthening Secretariat capacity to conduct research and analysis in support of this process;

(c) Making full use of modern information technology to automate many aspects of research, data management and other routine secretariat tasks related to both reporting activities and complaints mechanisms; and

(d) Facilitating continuation of the debate on rationalizing the functioning of the treaty body system, making concrete progress in 2001 with respect to at least one issue common to the treaty bodies.

Significant progress was made in 2000 in respect of the first three objectives.

## B. Progress to date and outstanding issues for 2001

### 1. Reporting procedures

9. Through the Plans of Action, the treaty bodies were able to benefit from strengthened analytical support from the Secretariat. In addition to the continued assistance provided to the Committee on the Rights of the Child (CRC) and the Committee on Economic, Social and Cultural Rights (CESCR) with respect to country analyses and the organization of and background research undertaken in connection with days of general discussion, the Committee against Torture (CAT) has also begun to receive country analyses and specialized assistance with communications.

10. Notwithstanding the inroads made on the backlog which existed at the end of 1999 and the 50 per cent increase achieved in the examination of reports, facilitated by the Plans of Action, the continuing pace of submission of reports has meant that the delay in the consideration of reports has only been reduced to between 18 and 36 months. Although this is a significant improvement, it remains well above the target of a one-year interval between the submission of a report and its consideration. Further attention will be given to alternative approaches for follow-up of the recommendations of the Committees. Future efforts will focus less on the holding of one-time missions and consultations at the national level and more on increased integration of such efforts with other OHCHR activities (e.g. in the field of national human rights institutions, or focusing on increased exchange and interaction with other human rights mechanisms).

11. With respect to the Plan of Action for CRC, the lessons learned from the first national-level activity, in Haiti in December 1999, has led to adjustments in this area for following years. No national-level activity will take place during 2001 and consideration will be given to refocusing efforts on the existing training and assistance on reporting provided by OHCHR on a regional basis. As for dissemination and awareness-raising activities, priority will be given to ensuring follow-up to days of general discussions, while the finalization of the proposed special report on the meeting that was held on the occasion of the tenth anniversary of the Convention on the Rights of the Child will depend on the availability of additional funding and sufficient staff support for the other activities.

12. The Plan of Action for CESCR called for certain activities which had not been established as immediate priorities under the project, including analyses of information received by the Committee concerning economic, social and cultural rights within the legal framework of the Covenant and preparation of substantive research papers to serve as a basis for the elaboration by the Committee of policy positions on key issues. Furthermore, the provision of

technical cooperation and other activities to promote the realization of Covenant rights and follow-up at the national level needs to be further developed in cooperation with United Nations sister agencies.

13. Another activity foreseen under the Plans of Action was the organization of "technical briefings" for new members, to orient them in a number of matters relevant to their service as members of human rights treaty bodies. At their 12th meeting, the chairpersons requested that OHCHR ensure that such briefings would be prepared for the next group of new treaty body members immediately prior to their first session, the contents of which should be finalized in consultation with the chairperson of the treaty body concerned.

14. The holding of technical briefings for new members of all the treaty bodies has been made possible under the Plan of Action for the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture. These technical briefings are aimed at providing introductory information to new members about the functions of the treaty body on which they were elected to serve, on the support that is provided by the Secretariat, the relationship between their treaty body and the agencies and departments of the United Nations, the administrative regulations and practices of the United Nations affecting their conditions of service, and other relevant information.

15. Owing to the limited availability of funding, it was only possible to distribute written materials for new members at the spring sessions of CERD, the Human Rights Committee (HRC) and CESCR in 2001. The newly elected members of CRC, who began their terms in May 2001, were the first to benefit from an organized meeting. On 18 May, one day prior to the start of the twenty-seventh session of the Committee, three new members and the Rapporteur met in Geneva. Presentations were made by the Rapporteur, members of the Committee secretariat, as well as other staff of OHCHR and representatives of those United Nations departments and agencies that work most closely with the Committee. The new members expressed appreciation for the opportunity to ask questions and to learn about the inner workings of the Committee prior to the start of their service.

16. The new members of CERD, CESCR and HRC will have an opportunity to participate in such a technical briefing, if they wish, immediately prior to their summer sessions.

### 2. Complaints procedures

17. In December 2000, OHCHR reorganized the Support Services Branch so as to create a "petitions team" to deal in an integrated fashion with the HRC, CERD and CAT individual communications procedures, while preserving the integration of that task with the servicing of the examination of reports and other functions of treaty bodies. The processing of individual communications entails screening and evaluating incoming correspondence, registering cases, preparing draft decisions on admissibility and on the merits of individual cases, providing uniform legal advice to the three Committees with communications procedures and ensuring follow-up to committee decisions. Follow-up may also entail missions in situ by specially

designated committee members to the States parties concerned, and the provision of technical assistance, for example, advice with regard to the adoption of national enabling legislation or the amendment of other laws and regulations.

18. It has now been established that some 2,000 letters remain to be attended to; of these 1,300 are in Russian. Of the 700 in various other languages it is expected that 50 per cent approximately will require analysis and possible summarizing as new cases. In addition, 191 registered cases await consideration by the Human Rights Committee.

19. Provision is being made to ensure the flow of information and consistency with the individual communications procedure being set up under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which will be serviced by the Division for the Advancement of Women at United Nations Headquarters in New York.

### 3. Information technology

20. The future integration of information contained in various OHCHR databases (treaty bodies, special procedures and 1503) will enhance the capacity of OHCHR to respond to and to identify possible duplications between mechanisms dealing with individual complaints.

21. Modern information technology is being used to allow the automation of many aspects of research, data management and other routine secretariat tasks relating to treaty body work. Most activities envisaged for the year 2000 are under way and will be finalized by September 2001.

22. The project for 2001 envisages the creation of CEEPS ("common early entry point system"). This requires the enhancement and upgrading of the 1503 database, thus ensuring compatibility between all the complaints databases (thematic/treaty bodies/1503). It is hoped that the possibility of CEEPS being extended to OHCHR field offices will be explored. Additionally, further technological developments in the treaty bodies databases are expected in 2001, particularly the automation of secretariat workflows now that much required information is readily available in the databases.

## C. Further opportunities and challenges for 2002 and 2003

23. The main priorities for the next two years are: (a) finalizing activities not totally achieved in 2000 (i.e. eliminating the backlog of complaints addressed to the Human Rights Committee, and organizing the inter-Committee meeting on common approaches); (b) continuing ongoing activities, such as support to reporting procedures of the treaty bodies envisaged in the three Plans of Action; and (c) following up on the implementation of concluding observations and of decisions on individual complaints issued by the treaty bodies.

### Inter-Committee meetings on "common approaches"

24. The Plan of Action foresaw the organization of several inter-Committee meetings on issues of common concern, for the purpose of developing common approaches to them. At their previous meetings, the chairpersons considered that it would be useful for the six treaty bodies to

hold in-depth discussions on topics of common concern or interest. At their 12th meeting, they expressed their view that the issues relating to periodicity of reporting merited in-depth, working-level discussions among members of each Committee. They therefore requested that OHCHR take the necessary steps to organize such a meeting, subject to consultation by the chairpersons with their treaty bodies on the desirability of periodicity as a topic for the meeting.

25. The question of periodicity has been raised before the regular sessions of the treaty bodies since June 2000, and the treaty bodies have been requested to provide specific input with regard to the agenda and expected outcome of such a meeting. To date, no agreement has emerged among the treaty bodies on the specific outcome that the meeting should seek to achieve. It remains to be seen how the treaty bodies can harmonize an aspect of the reporting process that is defined for each in the respective treaty.

26. This section of the present report is intended to help the chairpersons plan an inter-Committee meeting by outlining various possible aims and outcomes of such a meeting. Sub-section (a) focuses on a procedural topic, namely, periodicity of reporting, which had already been identified by the chairpersons as a topic for this meeting. Sub-section (b) focuses on a substantive human rights issue that holds relevance for all the treaties: human trafficking. Sub-section (c) presents another possible topic, one that presents both procedural and substantive challenges for the treaty bodies - the persistent problem of reservations to the treaties.

**(a) Periodicity**

27. The principle of harmonized reporting and resolution of the technical issues involved could be the subject of an inter-Committee meeting, which could have as its central objective the establishment of a new procedure for harmonizing reporting periodicity for all States parties to the human rights treaties.[1] It should be understood that the reporting periodicity is clearly established within the treaty itself in the case of ICERD, CEDAW, CAT, CRC and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)[2]. An equally rigid periodicity was stipulated for ICESCR by its main supervisory organ, the Economic and Social Council.[3] HRC is the only human rights treaty body that enjoys complete flexibility in determining the periodicity of reports due from States parties.[4]

28. Over the years, it has often been suggested that the reporting requirements under the six human rights treaties pose considerable difficulties for States parties to comply with them. In addition to the wide range of matters that reports must cover, in many cases States parties are required to prepare reports under several treaties within a short period of time, several years then elapsing before the next reports are due. Many States parties commence the preparation of their reports by establishing an inter-ministerial network among the relevant government units. When the work of such a network is concentrated in a short period and does not continue on an ongoing basis, this results in a cumbersome re-initiation of the process for the next reports due.

29. It should be noted, however, that a concentration of reports submitted within a short period has the benefit of enabling both a State party and the various treaty bodies to make use of much of the same information, which would be relatively up to date at the time it reaches the treaty bodies. This could considerably reduce the work involved in the reporting process, not only for States parties, but also for all partners of the treaty bodies that regularly provide them

with information (United Nations departments and agencies, other inter-governmental organizations, non-governmental organizations, etc). In addition, concluding observations of a treaty body that supported those adopted not long before by other treaty bodies could greatly strengthen their mutual concerns and recommendations.

30. All of the treaty bodies have also faced difficulties with respect to the reporting requirements stipulated in their respective treaties or established in practice. Their difficulties relate to: (i) the accumulated backlogs of reports that have been submitted and are awaiting examination by the treaty bodies and (ii) the large number of non-complying States that submit a report only after long delays or not at all.

31. While the treaty bodies, States parties and other observers and participants in the treaty system seem to agree that the issue requires careful consideration and remedy, two factors have prohibited action in this area. First, there is no consensus on the direction that a change should take: whether the submission of reports due by States parties should be evenly spaced among the various treaty bodies or concentrated within a short period. Second, there is a general reluctance to embark on any process that would require amending the treaties, particularly in view of the slow pace at which amendments already adopted by meetings of States parties are being formally accepted by individual States parties.

32. Hence, there has been ad hoc development of rules and practices by the treaty bodies regarding the determination of dates when reports are due, the acceptance of combined submissions (i.e, the submission of multiple reports in a single document) and other innovations. These rules and practices represent de facto departures from the strict periodicities set out in many of the treaties. To date, such departures have taken place within Committees with respect to the reporting history of States parties to the treaty that they each monitor. No attempt has been made to rationalize the procedure from the perspective of the drafters of reports by spacing out the dates by when States must submit their reports under all the treaties.

33. This subject could be taken up at a meeting of an inter-Committee working group. In anticipation of such a meeting, the treaty bodies would each need to explore the desirability, direction and purpose of harmonizing reporting obligations under all the treaties. If it should be considered beneficial that submission of State party reports be evenly spaced, the inter-Committee working group should address, inter alia, the following practical matters.

34. What is an optimal reporting cycle? Should a report be submitted once a year to a different treaty body?[5] In this scenario, if a State is a party to six treaties, it would appear once every six years before all treaty bodies, which would lengthen the time between appearances from the present two years in the case of CERD to five years (CRC and others). Would States that are parties to three treaties still need to produce a report each year, thus appearing every three years before the relevant treaty bodies? Or should they submit a report every two years to a different committee and maintain the six-year interval between appearances before a treaty body? What should be the obligations of States that are parties to only one treaty? To four treaties or to five? Should the reporting obligations under MWC already be included in the new procedure, or should they be omitted until it enters into force?

35. How would the new procedure deal with late or non-submission of reports? Would the dates for submission of subsequent reports to all treaty bodies be readjusted, or would the treaty body to which a report is late reschedule the date due on its own?

36. In addition to addressing such issues in establishing a new procedure, the inter-Committee meeting may proceed to consider the implications of the new procedure for the treaties. It may decide to begin drafting amendments to the provisions relating to periodicity which, after being fully discussed by the treaty bodies, could be drawn to the attention of meetings of States parties.

**(b) Trafficking and human rights**

37. A second option for an inter-Committee meeting would be to focus on a substantive theme. Examining the human rights issues raised by trafficking would be a timely effort to address a growing international concern. Trafficking is an issue in which crucial human rights aspects are at risk of being neglected and which raises concerns under the six treaties. It raises human rights problems for States in all regions and at all levels of development. Consistency in the approach of all six treaty bodies to the human rights aspects of trafficking would provide valuable guidance to growing national and international efforts in this area.

38. Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, defines trafficking in persons as:

> " ... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

The Protocol further states that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth above.

39. A growing international priority. Human trafficking - particularly as it affects women and children - is now high on the international political agenda and has been identified (by the Secretary-General, the High Commissioner for Human Rights and the head of the United Nations International Drug Control Programme, among others) as one of the major human rights challenges of the twenty-first century. A special ILO study released on 25 May 2001 identified the trade in human beings as the fastest growing crime. It affects almost all countries in the world, whether as sending countries, transit countries or receiving countries.

40. A timely issue. New international standards are being defined, requiring close attention to their human rights implications. A global treaty against trafficking was concluded in 2000 under the auspices of the Commission on Crime Prevention and Criminal Justice. The Council of Ministers of the European Union, the Parliamentary Assembly of the Council of Europe and the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) have all recently issued directives, recommendations and resolutions on the subject. The first ever, regional anti-trafficking treaty has been drafted under the auspices of the South Asian Association for Regional Cooperation (SAARC). Many of the major transit and destination countries have recently amended or adopted legislation aimed at preventing trafficking, punishing traffickers and protecting victims.

41. Relevance of the neglected human rights approach. While human rights figure prominently in trafficking discourse, it is the connection between trafficking and migration - particularly illegal labour migration - that is the driving political force behind international anti-trafficking efforts. As a result, this issue has been removed from the human rights framework to which it traditionally belonged and human rights are being increasingly marginalized in anti-trafficking initiatives, particularly at the national level. Yet human rights should be an essential part of prevention, punishment and protection strategies. A broad range of human rights standards are regularly invoked in the trafficking context, including: the prohibition of slavery and servitude; the prohibition of trafficking in women, forced prostitution and forced marriage; forced and compulsory labour; freedom of movement, debt bondage; protection of migrants and migrant workers; violence against women; and the rights of the child. However, the issue does not exist within a neat international legal framework and very little work has been done to identify the relevant human rights norms with precision.

42. Relevance to treaty bodies. The human rights violations suffered by victims of this trade are of unusually direct relevance to all seven core human rights treaties and will require increased attention by the six treaty bodies. All of the treaty bodies (with the apparent exception of CAT) have dealt with trafficking in the context of their examination of States parties' reports. In order of frequency and depth, CRC, CEDAW, CESCR, HRC and CERD have addressed trafficking issues. The current level of attention of the treaty bodies to human rights problems raised by trafficking is, however, both ad hoc and inconsistent.

### (c) Reservations to treaties

43. A third option could be for the inter-Committee working group to focus on areas where a common approach would hold both procedural and substantive implications. One such topic of great relevance to all the treaty bodies is reservations to human rights treaties. In addition to the treaty bodies, a meeting on this topic would also be of value to the International Law Commission, with regard to its study of the issue of reservations, and to the Sub-Commission on the Promotion and Protection of Human Rights, which is continuing to address the question of reservations to human rights treaties.

44. The Vienna Convention on the Law of Treaties, of 1969, defines a reservation as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".[6] The Vienna

Convention prohibits reservations that are incompatible with the object and purpose of the treaty that is the object of the reservations. However, there is no explicit mechanism in that Convention, beyond that of objections by other States parties, by which a reservation can be adjudged incompatible with the object and purpose of the treaty.

45. The six international human rights treaties have achieved a high degree of participation by States parties. However, a large number of reservations have been lodged, in particular to the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Responses to those reservations, particularly the reservations entered to the Convention on the Elimination of All Forms of Discrimination against Women, suggest that a significant number of the reservations are contrary to the object and purpose of the treaties.

46. States have repeatedly been called upon to limit the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them. Such was the case at recent major international events that concern these treaties, such as the 1993 World Conference on Human Rights, the 1995 Fourth World Conference on Women and the General Assembly, at its annual sessions, in its resolutions on the respective treaties.

47. The treaty bodies have long been concerned about reservations lodged to the international human rights treaties. The Human Rights Committee and the Committee on the Elimination of Discrimination against Women have adopted general comments or recommendations on the issue of reservations. In addition, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child address reservations in their guidelines for the preparation of reports by States parties. During the consideration of States parties' reports, nearly all the treaty bodies question States parties about their reservations and recommend that they consider withdrawing them. Several treaty bodies have expressed doubts as to whether particular reservations were compatible with the object and purpose of the treaties. The Human Rights Committee has examined reservations to the first Optional Protocol to the International Covenant on Civil and Political Rights in the context of individual communications and made determinations as to whether such reservations were valid.

48. The issue of reservations has been discussed at the meetings of chairpersons, including at their 5th meeting, in 1994, when the chairpersons recommended that the treaty bodies should require States parties to explain their reservations and should clearly state that certain reservations were incompatible with treaty law.[7]

49. The possibility of seeking an advisory opinion from the International Court of Justice on the validity and legal effect of reservations to the Convention on the Elimination of All Forms of Discrimination against Women has been raised in the past. In its resolution 1992/3, the Sub-Commission on the Promotion and Protection of Human Rights requested the Secretary-General to seek the views of the Committee on the Elimination of Discrimination against Women and the Commission on the Status of Women on the desirability of seeking such an opinion.[8] At its twelfth session, in 1993, the Committee on the Elimination of Discrimination

against Women recalled that it had raised the issue of reservations at its previous sessions and emphasized the importance of an opinion that "might assist Governments to reconsider their reservations with a view to withdrawing them".[9] The Committee decided to support steps taken in common with other treaty bodies to seek such an opinion that would clarify the issue and would assist States in ratifying and implementing international instruments. An advisory opinion from the ICJ has not yet been sought.

50. At its forty-sixth session in 1994, the International Law Commission (ILC) appointed Mr. Alain Pellet, Special Rapporteur for the topic, "the law and practice relating to reservations to treaties" (subsequently changed to "reservations to treaties"). At its forty-ninth session, in 1997, the ILC adopted "Preliminary Conclusions of the International Law Commission on reservations to normative multilateral treaties including human rights treaties",[10] and continues to consider the issue of reservations.

51. A working paper of the Sub-Commission on the Promotion and Protection of Human Rights has been prepared by Ms. Françoise Hampson on the question of reservations to human rights treaties[11] and, in its resolution 2000/26 of 18 August 2000, the Sub-Commission decided to appoint Ms. Hampson as Special Rapporteur to prepare a comprehensive study on reservations.[12]

52. The objectives of the expert group meeting could be to:

(a) Examine the legal framework for reservations to multilateral treaties and discuss the problems arising from reservations to human rights treaties;

(b) Examine the experience of the treaty bodies in respect of reservations within the context of the treaty bodies' general recommendations/comments, reporting guidelines, constructive dialogue, concluding observations and communications;

(c) Propose strategies for the treaty bodies in dealing with reservations within the context of their general recommendations/comments, reporting guidelines, constructive dialogue, concluding observations and communications;

(d) Provide input into the study of the issue of reservations by the International Law Commission and any other study which may be undertaken by any Charter-based body;

(e) Contribute to enhancing the effectiveness and rationalizing the working methods of the treaty bodies.

## III. STRENGTHENING SUPPORT TO AND ENHANCING THE EFFECTIVENESS OF THE TREATY BODIES

53. In document HRI/MC/2001/Misc.2, the chairpersons will have before them information on the support provided by OHCHR to the treaty bodies. The chairpersons will also have before them an informal chart prepared by the Secretariat on action taken or due to be taken immediately by OHCHR to implement, in relation to the Geneva-based treaty bodies, some of

the recommendations proposed by Professor Anne Bayefsky in a recently completed study entitled The UN Human Rights Treaty System: Universality at the Crossroads.

54. Particular attention is drawn to the recommendation of Professor Bayefsky concerning "inadequate reports". She recommends that the treaty bodies should encourage the OHCHR secretariat to identify incoming reports which may be wholly unsatisfactory in their failure to follow reporting guidelines (in length, form or absence of statistics) in order to permit them to suggest informally to the States parties ways and means to resubmit an improved report for consideration by the treaty bodies. The Chairpersons may wish to discuss this recommendation.

## IV. OTHER MATTERS

### Status of the treaty bodies at major United Nations events

55. At the 12th meeting, the Chairpersons reiterated their view that treaty body chairpersons, or designated members, should be present when the annual reports of treaty bodies are considered by their supervisory organ, whether it be the General Assembly or the Economic and Social Council (A/55/206, para. 74). They also reiterated their recommendation that they be granted formal status within the Economic and Social Council, and hence with its functional commissions, to enable them to participate in discussions on matters of relevance to their respective committees (A/55/206, para. 75).

56. It should be noted that the question of status has several implications. First, recognition of formal status, as reflected in the rules of procedures of the events in question, is directly linked to recognition of a right to participate in the oral and written processes of those events. The rules of procedure of the major world conferences relating to human rights, including the World Conference on Human Rights of 1993, the Fourth World Conference on Women of 1995, and the forthcoming Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held in Durban in September 2001, provide for the participation of representatives of United Nations bodies and mechanisms in their deliberations as observers. In the case of the latter two conferences, the rules of procedure specifically provide for the participation of members of CEDAW and CERD as observers in the deliberations of the Conferences.[13] All the bodies and organizations formally recognized in the rules of procedure of a United Nations event may also submit written contributions for distribution to all participants.

57. With regard to regular United Nations meetings, the treaty bodies do not participate in sessions of the General Assembly, the Economic and Social Council or the Commission on Human Rights, although they are required by the terms of their respective treaties to submit annual or biannual reports on their activities.[14] The rules of procedure of these bodies do not accord a formal status to the treaty bodies at their deliberations. However, treaty bodies may be invited to participate in certain special events. For example, CRC has been invited to be represented at the Special Session of the General Assembly on Children, although it, like the other treaty bodies, does not participate in the regular sessions of the General Assembly.

58. Second, the question of status is closely linked to the question of financial resources. The resources that have been allocated for the functioning of the treaty bodies from the regular budget of the United Nations do not include provision for participation of representatives of the treaty bodies in the General Assembly, the Economic and Social Council or its functional commissions.

59. It is noted that in the reformed agenda of the Commission on Human Rights, the treaty bodies occupy a biennial agenda sub-item, to be discussed on even-numbered years. At its fifty-seventh session, several delegations spoke on that sub-item. Since it was not foreseen as part of the agenda of that session but rather of the fifty-eighth session, and since the treaty bodies have no formal status at the Commission, none of the chairpersons were present for that discussion. An informal summary of the discussion has been prepared by the Secretariat and is available at the present meeting as a background document (HRI/MC/2001/Misc.1).

60. The matter is tentatively scheduled to be discussed between the chairpersons and representatives of States during their informal consultation at the present meeting.

## Notes

[1] The treaties referred to are: ICESCR, ICCPR, ICERD, CEDAW, CAT and CRC. The seventh treaty that could be included in the discussion is MWC, which has currently been ratified by 16 of the required 20 States to enter into force and signed by an additional 10 States. It has been suggested that this treaty should be amended at an early stage so as to provide that the supervisory functions would be performed by one of the existing committees rather than an entirely new supervisory body. According to this view, action should be taken now when there are few States parties to reach an agreement about amending the treaty (E/CN.4/1997/74, para. 96).

[2] The reporting periodicities set out in the treaties are:

CERD: within one year of the treaty's entry into force for each State party and every two years thereafter,
CEDAW: within one year of entry into force and every four years thereafter,
CAT : within one year of entry into force and every four years thereafter,
CRC: within two years of entry into force and every five years thereafter, and
MWC (not yet in force): within one year of entry into force and every five years thereafter.

[3] In the case of ICESCR, the reporting periodicity is regulated by a system established in Economic and Social Council resolution 1998/4. In general terms, it requires that the initial report of States parties be submitted approximately two years after entry into force and subsequent reports every five years thereafter.

[4] In the case of HRC, the treaty monitored by that Committee specifies that the initial report of States parties should be submitted within one year of entry into force but allows the Committee flexibility in determining the timing of submission of subsequent reports. In accordance with its

recently revised rules of procedure (see rules 70 and 70A, CCPR/C/3/Rev.6), the Committee will, after considering a report by a State party, establish the date by which the next report will be due. When the Committee has identified certain priorities in its concluding observations relating to a State party, that State may submit replies. The Committee would consider them and, based on its findings could set a new date for the submission of the next report.

[5] See HRI/MC/2001/Misc.1.

[6] Vienna Convention on the Law of Treaties 1969 (United Nations Treaty Serics, vol. 1155, No. 18232, p. 331), article 2.1 (d).

[7] A/49/537, annex, para. 30.

[8] See, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-fourth session (E/CN.4/1993/2 -E/CN.4/Sub.2/1992/58), chap. II, sect. A.

[9] See, Report of the Committee on the Elimination of Discrimination against Women, Official Records of the General Assembly, Forty-eighth Session, Supplement No. 38 (A/48/38), sect. I.A, para. 4 (b).

[10] See, Report of the International Law Commission on the work of its forty-ninth session, Official Records of the General Assembly, Fifty-second Session, Supplement No. 10 (A/52/10), chap. V, para. 157.

[11] E/CN.4/Sub.2/1999/28, see para. 20.

[12] In its decision 2001/113 of 25 April 2001, the Commission on Human Rights requested the Sub-Commission to reconsider its request to appoint Ms. Hampson as a Special Rapporteur, in the light of the work under way in the International Law Commission

[13] Rule 64 of the rules of procedure of the Fourth World Conference on Women (A/CONF.177/2) and rule 64 of the provisional rules of procedure of the World Conference against Racism (A/CONF.189/PC.1/21, annex IV).

[14] CESCR reports annually to the Economic and Social Council, in accordance with Council resolution 1985/17. The remaining treaty bodies report annually, and CRC reports biannually, to the General Assembly, through the Third Committee.

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